

No. PD-0243-21

**In The
Court of Criminal Appeals
Of The State of Texas
Austin, Texas**

FILED
COURT OF CRIMINAL APPEALS
5/13/2021
DEANA WILLIAMSON, CLERK

**ALLEN CHRISTOPHER LANCLOS,
Petitioner**

vs.

THE STATE OF TEXAS

PETITION FOR DISCRETIONARY REVIEW

COMES NOW, Allen Christopher Lanclos and petitions this Court to review the judgment affirming the decision regarding his application for writ of habeas corpus seeking bail reduction in Cause No. 09-20-00296-CR in the Ninth Court of Appeals, and in Cause No. 61738 in the 356th District Court in Hardin County, Texas.

Respectfully submitted,

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Appellate Counsel:	Ryan W. Gertz The Gertz Kelley Law Firm 2630 Liberty Beaumont, Texas 77702
Appellee:	The State of Texas
Trial Prosecutors:	Rebecca Walton and Michelle Townsend Hardin County Courthouse P.O. Box 1409 Kountze, Texas 77625
Appellate Prosecutors:	Rebecca Walton and Michelle Townsend Hardin County Courthouse P.O. Box 1409 Kountze, Texas 77625
Trial Judge:	Hon. Steven Thomas 356 th District Court 300 W. Monroe Street Kountze, Texas 77625

TABLE OF CONTENTS

	Page
IDENTITY OF PARTIES AND COUNSEL.....	iii
TABLE OF CONTENTS.....	iv
INDEX OF AUTHORITIES.....	v
STATEMENT REGARDING ORAL ARGUMENT.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
SUMMARY OF THE ARGUMENT.....	4
GROUND FOR REVIEW.....	5
1. The appellate court erred by denying relief from the trial court’s abuse of discretion in not setting a personal bond or reducing Lanclos’s bond to an amount affordable to him, which the Code of Criminal Procedure clearly requires as relief.....	5
CONCLUSION.....	10
PRAYER.....	11
CERTIFICATE OF SERVICE.....	12
CERTIFICATE OF COMPLIANCE.....	12

INDEX OF AUTHORITIES

	Page
<i>Ex parte Castellano</i> , 321 S.W.3d 760, 763 (Tex. App.-Fort Worth 2010, no pet.).....	7
<i>Ex parte Green</i> , 688 S.W.2d 555, 557 (Tex. Crim. App. 1985).....	10
<i>Ex parte Gill</i> , 413 S.W.3d 425 (Tex. Crim. App. 2013).....	6
<i>Ex parte Hicks</i> , 262 S.W.3d 387, 389 (Tex. Crim. App. 2008).....	5
<i>Ex parte Kernahan</i> , 657 S.W.2d 433, 434-35 (Tex. Crim. App. 1983).....	5, 8
<i>Ex parte Jones</i> , 803 S.W.2d 712, 716 (Tex. Crim. App. 1991).....	10
<i>Ex parte Matthews</i> , S.W.3d 884 (Tex. App. – Beaumont 2010, no pet.).....	7
<i>Rowe v. State</i> , 853 S.W.2d 581 (Tex. Crim. App. 1993).....	5, 8, 9

STATUTES, CONSTITUTIONAL PROVISIONS and OTHER AUTHORITIES

Texas Code of Criminal Procedure Article 17.151.....	2, 3, 5, 6, 7, 8, 9, 10
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STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests oral argument should the Court grant this Petition for Review.

I. STATEMENT OF THE CASE

This is an appeal from a denial of pre-trial habeas relief relating to Lanclos's bond. On August 23, 2020, Lanclos was arrested for the offense of assault on public servant. Lanclos's bonds were set at \$2,250,000.00.¹ On September 14, 2020, still detained and still not indicted, Lanclos filed an Application for Writ of Habeas Corpus seeking relief under the Texas Code of Criminal Procedure Article 17.15.² A hearing was held on October 9, 2020 before Hon. Steven Thomas of the 356th District Court, Hardin County, Texas on Lanclos's 17.15 Writ.³ Lanclos's bonds were not reduced and the Court ultimately never ruled on the Writ.

On November 24, 2020, still detained and still not indicted, Lanclos filed an Application for Writ of Habeas Corpus seeking relief under the Texas Code of Criminal Procedure Article 17.151.⁴ A hearing was held on December 18, 2020 before Hon. Steven Thomas of the 356th District Court, Hardin County, Texas on Lanclos's 17.151 Writ.⁵ The State did not appear at the hearing.⁶ Lanclos demonstrated to the Court that he had been in custody for more than ninety days and

¹ CR 13-14.

² CR 2.

³ CR 12; RR 2, 4 – 9.

⁴ CR 8.

⁵ RR 3, 4.

⁶ RR 3, 4.

had not been indicted and thus the State could not be ready for trial.⁷ Subsequent to that hearing, the District Court set bonds totaling \$1,500,000.00.⁸ The Court had previously taken evidence that Lanclos was indigent.⁹

As of the date of filing of Appellant's Petition in this Court, Lanclos has still not been indicted and is still detained in custody on a bond he cannot afford. On December 29, 2020, Lanclos timely filed his Notice of Appeal.

II. STATEMENT OF PROCEDURAL HISTORY

On March 10, 2021, the Court of Appeals affirming the decision regarding his application for writ of habeas corpus seeking bail reduction. This petition has been timely filed with the Clerk of the Court of Appeals.

III. STATEMENT OF FACTS

Lanclos was arrested for three counts of assault on police officers on August 23, 2020. Lanclos's bonds were initially set at \$2,250,000.00.¹⁰ A hearing was held on December 18, 2020 before Hon. Steven Thomas of the 356th District Court, Hardin County, Texas on Lanclos's 17.151 Writ.¹¹ The State chose not to appear at the hearing.¹² Lanclos demonstrated to the Court that he had been in custody for

⁷ RR 3, 4 – 6.

⁸ CR 12.

⁹ RR 2, 5 (offering affidavit of Kristy Lanclos, CR 6).

¹⁰ CR 13-14.

¹¹ CR 8.

¹² RR 3, 4.

more than ninety days and had not been indicted and thus the State could not be ready for trial.¹³

On December 28, 2020, Lanclos's bonds were reduced to a total of \$1,500,000.00.¹⁴ Lanclos cannot afford such bond and no bondsman will make that bond.¹⁵ As of the date of filing of this Petition in this Court, Lanclos has still not been indicted and is still detained.

IV. SUMMARY OF THE ARGUMENT FOR REVIEW

The Texas Code of Criminal Procedure requires a trial court to release an accused on personal recognizance or a *bond affordable to that individual* if the State is not ready for trial within ninety days of the arrest. The trial court erred by not releasing Lanclos on a personal bond or reducing Lanclos's bond in amount affordable to him, which the Code clearly requires as relief. Moreover, though, the Court of Appeals erred in affirming this ruling by shifting the burden to Lanclos regarding what constitutes and "affordable bond."

¹³ RR 3, 4 – 6.

¹⁴ CR 12.

¹⁵ RR 2, 5 (offering affidavit of Kristy Lanclos, CR 6).

V. GROUNDS FOR REVIEW

GROUND FOR REVIEW ONE: *The court of appeals erred by not reversing the trial court's abuse of discretion in denying Lanclos a personal bond or reducing Lanclos's bond to an amount affordable to him, which the Code of Criminal Procedure clearly requires as relief.*

A. The Clear Directive of the Code

Article 17.151 of the Texas Code of Criminal Procedure provides that a defendant who is detained pending trial “must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial . . . within: (1) 90 days from the commencement of his detention if he is accused of a felony.”¹⁶ The statute is mandatory with no discretion afforded the trial court.¹⁷ Unless evidence suggests otherwise, if the accused cannot afford a bond in any amount, the trial court should elect to release him on personal bond.¹⁸ This Court has never held Article 17.151 to be optional or to involve discretion on the part of the trial court. The Statute specifically describes the two options: provide a personal bond or reduce the bail to an amount that the accused can afford. Here, the Court did not inquire into what Lanclos could afford, but Lanclos reurged that bonds totaling \$2.25 million were unaffordable.

¹⁶ Tex. Code Crim. Proc. Ann. art. 17.151 § 1.

¹⁷ See *Rowe v. State*, 853 S.W.2d 581, 583 (Tex. Crim. App. 1993) (en banc)

¹⁸ See e.g. *Ex parte Hicks*, 262 S.W.3d 387, 389 (Tex. App. – Waco 2008); citing *Rowe*, 853 S.W.2d at 582, *Ex parte Kernahan*, 657 S.W.2d 433, 434-35 (Tex. Crim. App. 1983).

In this case, the facts are undisputed. Lanclos cannot afford an extremely high bond. The State has still not indicted Lanclos as of the date of filing this Petition. The Court of Appeals, while correctly laying out the standard under 17.151, affirmed the absurdly high bond decision of the trial court.

Moreover, though, the notion that \$1,500,000 bonds would be readily affordable to any citizen is absurd. Using a traditional bail bondsman, that would require a payment of \$150,000 just for the bond. A bond that high is patently punitive and intended as an instrument of oppression.

B. *Ex Parte Gill* Application to Article 17.151

In *Ex parte Gill*, the issue present in this matter was at bar.¹⁹ The Appellants in *Gill*, were charged and arrested for murder, and their bail was set at \$1,000,00.00 each.²⁰ Prior to filing their application for habeas relief, Appellants filed three bail reductions.²¹ The trial court reduced their bail to \$100,000.00 and then to \$50,000.00; however, Appellants bail was set in an amount not affordable to them.²² After being in custody for over ninety days, Appellants filed applications for writs of habeas corpus under Article 17.151 of the Texas Code of Criminal Procedure;

¹⁹ *Ex parte Gill*, 413 S.W.3d 425 (Tex. Crim. App. 2013)

²⁰ *Id.* at 426

²¹ *Id.*

²² *Id.* at 427

however, the trial court denied their request after a hearing before the court.²³ Appellants appealed the decision to the court of appeals; however, the court of appeals affirmed the trial courts decision based upon *Ex parte Matthews*.²⁴

Due to the court of appeals being split on the issue, the Court of Criminal Appeals granted Appellants' petitions for discretionary review.²⁵ The Court of Criminal Appeals held that, under the plain language of Article 17.151, a trial court must release a defendant from custody on personal bond or by reducing the amount of bail where he has been continuously incarcerated for more than ninety days and the State is not ready for trial.²⁶ This Court reasoned that "[t]he first sentence of Article 17.151 unequivocally declares that a defendant detained pending trial 'must be released' if the State is not ready for trial within the appropriate amount of time."²⁷ The Court also held, factors used in setting the amount of bail found in Article 17.15 do not apply to an Article 17.151 application for release.²⁸

Here, Lanclos has been in custody since the date of his arrest on August 23, 2020, well over ninety days. Without an indictment, the State cannot be ready for

²³ *Id.*

²⁴ *Id.* Citing *Ex parte Matthews*, S.W.3d 884 (Tex. App. – Beaumont 2010, no pet.)

²⁵ *Id.* at 428

²⁶ *Id.* at 427–28 (Tex. Crim. App. 2013)

²⁷ *Id.* at 430 (quoting Tex. Code Crim. Proc. Ann. art. 17.151, § 1)

²⁸ *Id.* at 432

trial.²⁹ As a threshold matter, then, “the existence of a charging instrument is an element of State preparedness.”³⁰ Therefore, it is clear that Appellant has been in custody for over ninety days and the State is not ready to proceed with trial.

C. *Rowe v. State*’s Application to the Amount of the Bail Reduction

While the trial court granted Lanclos’s writ and reduced his bond to \$1,500,000.00, that is an amount not affordable to him and violates Article 17.151.³¹ In *Rowe v. State*,³² this issue was at bar. In *Rowe*, Appellant sought release under Article 17.151 of the Texas Code of Criminal Procedure.³³ It was undisputed that Appellant had been arrested on murder and aggravated assault allegations, and the State was not ready for trial ninety days after Appellant’s arrest.³⁴ Appellant sought habeas relief, specifically requesting release upon a personal bond.³⁵ The trial court refused to release Appellant on personal bond, and subsequently reduced the bond on each case by \$1,000 (murder from \$10,000.00 to \$9,000.00, and aggravated

²⁹ See *Ex parte Castellano*, 321 S.W.3d 760, 763 (Tex. App.-Fort Worth 2010, no pet.) (“The State cannot announce ready for trial when there is no indictment.”).

³⁰ *Kernahan v. State*, 657 S.W.2d 433, 434 (Tex. Crim. App. 1983).

³¹ See CR, 6; affidavit of Kristy Lanclos.

³² 853 S.W.2d 581 (Tex. Crim. App. 1993)

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

assault from \$4,000.00 to \$3,000.00).³⁶ Appellant appealed the trial court's decision, and the court of appeals affirmed the trial court's decision.³⁷

In *Rowe*, the Court of Criminal Appeals held, that where it was undisputed that the State was not ready for trial ninety days after an accused's arrest, a judge had only two options under Article 17.151: either release the accused upon personal bond or reduce the bail amount.³⁸ Furthermore, if the court chooses to reduce the amount of bail required, it must reduce bail required to an amount that the record reflects an accused can make in order to effectuate release.³⁹

Here, the record from the first Writ hearing reflects that Appellant does not have the resources necessary to make a bond in the amount of \$2,250,000.00 – the original bond amount.⁴⁰ The Court of Appeals held that the reduction to bonds totaling \$1.5 million was reasonable. The Court reasoned that Lanclos did not provide any evidence that a reduction to that amount was unaffordable to him. The Court's decision was untethered from any evidence or guiding principal, though. The Court chose an arbitrarily high bond amount and the Court of Appeals

³⁶ *Id.* at 582

³⁷ *Id.* Note, the court of appeals relied on factors outside of Article 17.151 to deny Appellant's requested relief, which ultimately led to the reversal of their decision. *Rowe*, 853 S.W.2d at 582.

³⁸ *Id.*

³⁹ *Id.* at 582, n. 1

⁴⁰ RR 2, 5 (offering affidavit of Kristy Lanclos, CR 6).

erroneously affirmed reasoning that the evidence was not sufficient to show that \$1.5 million was unaffordable.

VI. Conclusion

Poor defendants disproportionately find themselves incarcerated until the resolution of their case, not due to the nature of the offense, but based upon their economic status. Whether a bond is \$500,000.00 or \$50,000.00, the end result remains the same for poor and indigent defendants; they remain incarcerated until the disposition of their case. The inability to make the bond set by the court, coupled with the State's lack of readiness for trial, leads to poor and indigent citizens languishing in jail in spite of being considered innocent. Article 17.151 preserves the presumption of innocence by ensuring that "an accused as yet untried and unreleased on bond will not suffer 'the incidental punitive effect' of incarceration during any further delay attendant to prosecutorial exigency."⁴¹

The trial court failed to follow the mandate of Article 17.151 by denying Lanclos a personal bond in this matter, as Lanclos has yet to be indicted within ninety

⁴¹ *Ex parte Jones*, 803 S.W.2d 712, 716 (Tex.Crim.App.1991) (quoting *Ex parte Green*, 688 S.W.2d 555, 557 (Tex.Crim.App.1985))

days of Lanclos's arrest and detainment in the Hardin County Jail. As such, Lanclos asks this Court to reverse the decision of the trial and appellate courts in denying the relief sought by writ. Specifically, Lanclos asks the Court to order Lanclos's release on personal bond or bonds totaling \$15,000 or less.

VII. Prayer

We request this Court grant any and all relief to Appellant as his entitled to receive.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 9.4(i)1, there are 2,062 words including endnotes and footnotes.

/s/ Ryan W. Gertz

Ryan W. Gertz

CERTIFICATE OF SERVICE

This is to certify that on May 10, 2021, a true and correct copy of the foregoing document was served on the Hardin County District Attorney's Office via e-file.

/s/ Ryan W. Gertz

Ryan W. Gertz

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-20-00296-CR

EX PARTE ALLEN CHRISTOPHER LANCLOS

On Appeal from the 356th District Court
Hardin County, Texas
Trial Cause No. 61738

MEMORANDUM OPINION

Appellant Allen Christopher Lanclos challenges the trial court's order granting, in part, his application for writ of habeas corpus seeking bail reduction. In a single appellate issue, Lanclos contends that the trial court abused its discretion by failing to sufficiently reduce the amount of his bonds in accordance with article 17.151 of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 17.151, § 1(1). We affirm the trial court's order.

BACKGROUND

In August 2020, Lanclos was arrested and charged with three felony counts of assault on a public servant. On September 1, 2020, the trial court set Lanclos's bonds at \$750,000 each. On September 11, 2020, Lanclos filed an application for

writ of habeas corpus under article 17.15 of the Texas Code of Criminal Procedure, in which Lanclos argued that the trial court should set appropriate bonds, because he could not afford his bonds totaling \$2,250,000. *See id.* art. 17.15(4). Lanclos's application indicates that he could afford bonds totaling \$150,000 or less. Lanclos attached the affidavit of his wife, Kristy, who averred that she had spoken with two bonding companies, and both companies refused to post bond for \$2,250,000. Kristy stated that she had to sell property to pay for Lanclos's attorney, and she and Lanclos could not afford to post bonds in the amount of \$2,250,000.

On October 9, 2020, the trial court conducted a hearing on Lanclos's application for writ of habeas corpus requesting reasonable bonds, and Kristy's affidavit was the only evidence introduced regarding the amount of bonds that Lanclos could afford. Lanclos did not present any evidence regarding his assets and financial resources. During the hearing, defense counsel indicated that Lanclos could afford bonds totaling \$150,000 and asked the trial court to reduce Lanclos's bonds to that amount. The State argued that Lanclos had a violent criminal history, and that when he committed the current offenses, he violated the conditions of his probation associated with a prior offense. After hearing the arguments of counsel, the trial court took the matter under advisement, but the trial court never ruled on the application.

On November 24, 2020, Lanclos filed a second application for writ of habeas corpus, alleging that his confinement violated article 17.151 because ninety days had

elapsed since his arrest without indictment and his three bonds totaling \$2,250,000 were beyond his financial means. *See id.* art. 17.151, § 1(1). According to Lanclos, he was entitled to either be released on a personal recognizance bond or to a reduction of his bonds to an affordable amount that he could make to obtain his release.

On December 18, 2020, the trial court conducted a hearing on Lanclos’s application for writ of habeas corpus, during which the State failed to appear. Defense counsel advised the trial court that Lanclos had been in jail for more than one hundred days and had not been indicted. Defense counsel did not present any evidence regarding the amount of bond that Lanclos could afford. The trial court granted partial relief by reducing Lanclos’s bonds from \$750,000 to \$500,000 each, totaling \$1,500,000.

STANDARD OF REVIEW AND APPLICABLE LAW

We review a trial court’s decision regarding bail reduction for an abuse of discretion. *See Ex parte Gill*, 413 S.W.3d 425, 428 (Tex. Crim. App. 2013); *Ex parte Smith*, 486 S.W.3d 62, 64 (Tex. App.—Texarkana 2016, no pet.). “A trial court abuses its discretion when it applies ‘an erroneous legal standard, or when no reasonable view of the record could support the trial court’s conclusion under the correct law and facts viewed in the light most favorable to its legal conclusion.’” *Ex parte Smith*, 486 S.W.3d at 64-65 (quoting *DuBose v. State*, 915 S.W.2d 493, 497-

98 (Tex. Crim. App. 1996), *overruled on other grounds by Guzman v. State*, 955 S.W.2d at 85, 90 (Tex. Crim. App. 1997)).

Article 17.151, section 1(1) provides as follows:

A defendant who is detained in jail pending trial of an accusation against him *must be released* either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within: (1) 90 days from the commencement of this detention if he is accused of a felony[.]

Tex. Code Crim. Proc. Ann. art. 17.151, § 1(1) (emphasis added). Article 17.151 preserves the presumption of innocence by ensuring that an accused, who is untried and unreleased on bond, will not suffer the incidental punitive effect of incarceration during any further delay resulting from prosecutorial exigency. *Ex parte Smith*, 486 S.W.3d at 65. The State bears the burden of making a *prima facie* showing that it was ready for trial within the ninety-day time period. *Id.* The State cannot announce that it is ready for trial when there is no indictment. *Ex parte Castellano*, 321 S.W.3d 760, 763 (Tex. App.—Fort Worth 2010, no pet.). When the State is not ready for trial within ninety days after the accused has been arrested and the accused has remained incarcerated continuously, article 17.151 requires that the trial court either release the accused on a personal bond or reduce bail to an amount the accused can make. *Ex parte Carson*, 215 S.W.3d 921, 924 (Tex. App.—Texarkana 2007, no pet.).

The only evidence in the record regarding Lanclos's ability to make bond is Kristy's affidavit stating that the two bonding companies she spoke with were

unwilling to post bond for \$2,250,000. Lanclos presented no testimonial or documentary evidence regarding his assets and financial resources. A bond reduction is not favored “when the defendant makes vague references to inability to make bond without detailing his specific assets and financial resources.” *Cooley v. State*, 232 S.W.3d 228, 236 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *see Ex parte Castellanos*, 420 S.W.3d 878, 883 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Based on this record, the trial court could have reasonably concluded that Lanclos’s evidence regarding his financial circumstances was inadequate and that it was justified in reducing Lanclos’s total bonds from \$2,250,000 to \$1,500,000. *See Cooley*, 232 S.W.3d at 236; *Ex parte Castellanos*, 420 S.W.3d at 883.

Viewing the entire record in favor of the trial court’s ruling, we hold that the trial court did not abuse its discretion by failing to further reduce the amount of Lanclos’s bonds. *See Ex parte Gill*, 413 S.W.3d at 428; Tex. Code Crim. Proc. Ann. art. 17.151, § 1(1). Lanclos obtained relief when the trial judge reduced the amount of his bonds by \$750,000. Accordingly, we overrule Lanclos’s sole issue and affirm the trial court’s order.

AFFIRMED.

W. SCOTT GOLEMON
Chief Justice

Submitted on February 18, 2021
Opinion Delivered March 10, 2021
Do Not Publish
Before Golemon, C.J., Kreger and Johnson, JJ.

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